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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of

ROCK COUNTY ATTORNEYS ASSOCIATION

To Initiate Arbitration
Between Said Petitioner and

Case 256
No. 44817 INT/ARB-5818
Decision No 26937-A

ROCK COUNTY

APPEARANCES:

Gordon E. McQuillen, Esq. on behalf of the Association
Bruce K. Patterson on behalf of the County

On October 7, 1991 the Wisconsin Employment Relations Commission appointed the undersigned Arbitrator pursuant to Section 111.70(4)(cm)6 and 7 of the Municipal Employment Relations Act in the dispute existing between the above named parties. A hearing in the matter was conducted on October 31, 1991 at Janesville, WI. Briefs were exchanged by the parties by December 30, 1991. Based upon a review of the foregoing record, and utilizing the criteria set forth in Section 111.70(4)(cm) Wis. Stats. the undersigned renders the following arbitration award.

ISSUES:

This dispute is over the terms of the parties' 1990-1991 collective bargaining agreement. Two issues are involved in the dispute, salaries in 1991 and vacations.

In 1991 the Association proposes an 8 step salary schedule ranging from \$26,430 to \$49,020, commencing on the anniversary date of each employee. The County proposes an 8 step schedule ranging from \$26,433 to \$47,135.

On the Vacation issue the County proposes capping vacation earnings at twenty two working days per year, except for employees currently earning more than that amount, who would continue to receive the paid vacation days that they earned in 1991.

The parties also disagree on what units of government should be deemed appropriate comparables in this proceeding.

ASSOCIATION POSITION

The Association's 1991 salary proposal seeks to improve salaries in two ways: first to accomplish an across the board increase, and second, and more important, to improve salaries at the top end of the schedule for employees with extensive seniority.

The Association proposal gives recognition to the value of continued service by senior members of the bargaining unit by continuing the annual increase in vacation and by boosting the wages of senior employees, whereas the County's proposal will act as a disincentive for the continued employment of the most senior members of the unit by capping their vacation and by confining their annual pay increases to across the board increases which lag behind the cost of living.

There is no ability to pay issue in this proceeding, but it is noteworthy that the County does not appear to be overly stressed with respect to its relative rate of taxation, and the Association's proposal would in no way adversely affect the County in this regard.

The Association's proposed comparables should be utilized in this proceeding based on the twin criteria of size and contiguity. By contrast, the County proposes some 16 counties from across the State, apparently chosen more or less at random.

In addition, the Association's proposed comparables contain only relevant counties which have assistant corporation counsel who are represented for purposes of collective bargaining. In contrast, at least four of the County's proposed comparables are not represented.

The County's reliance of population comparability is misplaced since it omits from its proposed comparables other counties with similar populations, and while it rejects larger counties, it includes much smaller counties.

Based upon the Association's proposed comparables, in 1990, based upon a comparison of the salary of the top paid assistant corporation counsel, the County will be paying more than \$370 below the comparable average, and entry level salaries would be at the bottom of the comparable group.

In 1991, the County's offer would plunge the top paid member of the unit to the lowest depth vis a vis the comparable average that has ever existed, while the Association's offer would restore the County to its 1987 over average pay level. Internal comparables also favor the Association's proposal since there is no "pattern" among the County settlements, which range from a low of 4% to a high of 11%.

For 1991, though the County calculates the Association's offer at 10.41%, it includes within its costing advancement within the salary schedule for members of this unit alone, whereas it did not include such step increases in its costing of other bargaining unit settlements.

The Association suggests that a more valid view of the cost of its final offer for 1991 is to compare the salary step levels for the end of 1991 with the step values for 1991. Such a comparison shows a range of increases from 4% (entry level) to 10.6%. On average, the schedule increases by 8.26%. Adding to this average across the board increase the 4% which the parties agree is the "across the board" increase, results in a two year increase of 12.26%.

All other represented County employees will receive, on average, 11.39% over two years. Thus, the Association's proposal places the attorneys less than 1% over the average, whereas the County's offer leaves the Association's members more than 3% below the average.

Also supportive of the Association's proposal is the average salary range of assistant district attorneys who were former members of this bargaining unit; that range being nearly 27% higher than the County's offer and 22% over the Association's offer.

Regarding the vacation cap issue, it is only now that senior unit members have begun to appreciate the benefit of continued accumulation, and to sever the benefit would undercut a longtime goal of those employees.

Secondly, the County has demonstrated no compelling need to make such a change.

Third, the County offers no quid pro quo for taking away this benefit. Instead, it offers the lowest salary increase of all represented County bargaining units.

Lastly, when vacation days and holidays among the Association's proposed comparability group are compared, there is no significant difference between the comparables and the County.

COUNTY POSITION

The County's proposed comparables (Brown, Dodge, Eau Claire, Fond du Lac, Kenosha, La Crosse, Manitowoc, Marathon, Outagamie, Racine, Walworth, Washington, Waukesha, and Winnebago Counties) have populations similar to Rock County. They also have positions to the bargaining unit positions in question.

The Association's proposed comparables are not comparable based on population similarity, since all four are much larger than Rock County.

The Association's selection of only of counties with represented attorneys is also not supportable under statutory standards.

Assistant district attorneys are not comparable employees since they are state employees covered by separate compensation plans and collective bargaining laws.

The County's proposed increase of 8.5% (9.48% overall), employing a traditional salary step increment six months after the date of hire and then on an annual basis, is more consistent with the increases in wage levels for similar positions in comparable counties and internal comparisons.

The Association proposes an 11.06% overall dollar increase from 1990-1991, an overall base salary increase of 13.07% from 1990-91, and a 27.25% increase from 1989-1990.

The County's wage offer of 12.5% and 14.53% overall is clearly the more comparable and reasonable of the two.

County settlements, but for the public health and registered nurse settlements, also support the reasonableness of the County's salary proposal. The nurse settlements were the result of a unique labor market problem, and should not be deemed comparable to this unit.

The County's vacation cap proposal is reasonable when viewed in the context of other comparable counties and other bargaining units in the County. In addition, there would be no loss of benefits to employees who already have exceeded the cap proposed by the County.

DISCUSSION.

On the comparability issue, the undersigned believes that the most appropriate comparables to utilize in this proceeding are Fond du Lac, Kenosha, Racine, Washington, and Winnebago Counties. The undersigned also would have utilized La Crosse County had salary data for that county been available. This selection of comparables is based upon similarity of population, the fact that said counties all include medium size urban development, and said counties are also more geographically proximate and are in a more similar labor market than the other counties proposed as comparables by the County.

Utilizing the foregoing comparables, based upon the record evidence presented, the undersigned has only been able to compare the minimum and maximum rates of comparable employees--comparisons of the salary rates of otherwise similarly situated employees in said counties has not been possible. Based upon available evidence, it would appear that the range of minimum salaries in 1991 was between \$26,430 to \$34,507, and that the average comparable minimum salary was \$29,725. At the maximum, the range was between \$37,455 and \$50,261, and the average was \$42,665

Based thereon, it would appear that the County's salary range at the minimum end of the range is significantly below average, and that some catch up is warranted, and that as the salary range approaches the maximum, it becomes much more competitive, and in fact, at the maximum it exceeds the comparable average, even under the County's proposal, by more than \$4000. It would thus appear that at the maximum end of the schedule, no unusual catch up settlement is warranted

It is clear that what the Association is attempting to do in this proceeding is to improve the salaries of the more senior attorneys in the bargaining unit. Based upon the foregoing comparability evidence, the undersigned does not believe that the above average settlement proposed by the Association can be justified. When the salary increases of the four attorneys who have been in the bargaining unit over the term of the proposed contract are examined, one discerns that the Association proposes an 8% increase for attorney Belling in 1991, which would generate a salary over \$48,900, more than \$6,000 over the comparable average. The County's 4% proposal for attorney Belling will generate a 1991 salary in excess of \$47,135, almost \$4,500 above the comparable average. Attorney Goerke, who is in the middle of the range, will receive an 17% increase, including a step increase, under the County's proposal, and a 19% increase under the Association's proposal. Attorney

Ring would receive a 17.5% increase, again including a step increase, under the County's proposal, and an 18+% increase under the Association's proposal. Attorney Heitzman would receive a 4% increase to \$47,135 under the County's proposal, and a 7% increase to at least \$48,540 under the Association's proposal, again, significantly above the comparable average

While it is clear that there is not a uniform pattern of salaries amongst the County's comparables, it does appear that at the maximum end of the salary schedule, where the disagreement between the parties is most significant, the County's salary proposal is the more comparable of the two. Relatedly, since it is undisputed that the Association has proposed an above average increase to address alleged inequities at this end of the schedule, the undersigned also concludes that the value of the increases contained in the County's salary proposal is also more comparable than the Association's.

Based upon the foregoing considerations, the undersigned deems the County's salary proposal to be both more comparable and reasonable than the Association's.

On the vacation cap issue, the County's proposal is not supported by the comparables, almost all of which have a higher cap than that proposed by the County. In addition, the County has offered no reasonable quid pro quo for the concession it is requesting the Association to make in this regard. Based upon these considerations, the undersigned deems the Association's position on the vacation cap issue to be more reasonable than the County's.

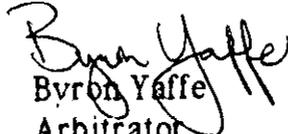
Having so concluded, the undersigned is confronted with the choice between total packages which contain a more reasonable salary proposal by the County and a more reasonable vacation proposal by the Association. While both issues are of significance to the parties, it seems obvious to the undersigned that the more critical issue to both is the salary issue, at least in terms of immediate impact, and therefore, based upon the relative importance of the two issues, the undersigned deems the County's total final offer to be the more reasonable of the two at issue herein.

Based upon all of the foregoing considerations, the undersigned hereby renders the following:

ARBITRATION AWARD

The County's final offer shall be incorporated into the parties' 1990-1991 collective bargaining agreement.

Dated this 17th day of January, 1992 at Madison, WI.


Byron Yaffe
Arbitrator